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8 UNITED STATES DISTRICT COURT  
9 for the  
10 WESTERN DISTRICT OF WASHINGTON

11 TIMOTHY ROBERTSON,  
12 individually,

13 Plaintiff,

14 v.

15 KITSAP COUNTY, a Municipal  
16 Corporation organized under  
17 the laws of the State of  
18 Washington; CONMED, INC., a  
19 Foreign Corporation; ARLEN  
20 JOHNSON, A.R.N.P.; BARBARA  
21 MULL, R.N.; SUE STEVENS, R.N.;  
22 AND BRUCE KALER, M.D.,

23 Defendants.

NO.

COMPLAINT FOR VIOLATION OF  
PLAINTIFF'S CONSTITUTIONAL  
RIGHTS UNDER 42 U.S.C. §1983

24 I. JURISDICTION & VENUE

25 1.1 Plaintiff, TIMOTHY ROBERTSON is a resident of Texas.

26 1.2 The defendant, KITSAP COUNTY, is a Municipal Corporation and  
27 a political subdivision of the State of Washington, and is  
28 located in Kitsap County, Washington.

1.3 Defendant CONMED, INC., is a foreign corporation incorporated  
in the State of Maryland, registered in the State of  
Washington, doing business in Kitsap County, Washington, and  
doing business with Defendant KITSAP COUNTY.

COMPLAINT FOR VIOLATION  
OF CONSTITUTIONAL RIGHTS  
UNDER 42 U.S.C. §1983 - Page 1 -

Anthony C. Otto  
Attorney at Law  
Post Office Box 1368  
Port Orchard, WA 98366  
(360) 876-5566 Telephone  
(360) 895-8689 Facsimile

1.4 Defendant BARBARA MULL, RN is a nurse working for Defendant CONMED, INC., in fulfilling its contract with Kitsap County. She is believed to be a resident of Kitsap County, Washington.

1.5 Defendant ARLEN JOHNSON, ARNP is a medical provider working for Defendant CONMED, INC., and is believed to be a resident of Kitsap County, Washington.

1.6. Defendant SUE STEVENS, RN is the Health Services Administrator working for Defendant CONMED, INC., and is believed to be a resident of Kitsap County, Washington.

1.7 Defendant BRUCE KALER, M.D., is the Kitsap County Jail facility medical director for Defendant CONMED, INC., and a medical provider for Defendant CONMED, INC.

1.8 All acts and omissions alleged in this complaint occurred in Kitsap County, Washington.

1.9 This presents a claim brought under 42 U.S.C. §1983, and states a Federal Claim.

1.10 Federal Courts have original jurisdiction over this case pursuant to 28 U.S.C. §§ 1331, 1441 and 42 U.S.C. §1983.

II. CAUSE OF ACTION - VIOLATION OF PLAINTIFF'S  
CIVIL RIGHTS UNDER 42 U.S.C. §1983

2.1 Defendant KITSAP COUNTY operates a public jail facility under color of law at 614 Division Street in Port Orchard, Kitsap County, Washington for housing incarcerated inmates for both pretrial and post conviction incarceration.

2.2 Defendant KITSAP COUNTY has a non-delegable duty to provide appropriate and necessary medical and dental services to those incarcerated in its jail facility, to ensure the inmates' health, welfare, and safety.

1 2.3 Defendant KITSAP COUNTY contracted with Defendant CONMED,  
2 INC., to provide inmate healthcare services, expressly  
3 including dental care, in an attempt to meet its duty, at a  
4 flat rate of compensation, regardless of medical or dental  
5 needs of the inmate population, and the costs thereof. This  
6 flat rate of compensation specifically includes an amount for  
7 medications for inmates, based not on medications dispensed,  
8 but on population in the facility for each month, except for  
9 specific medical conditions not here relevant.

10 2.4. The practical effect of this flat rate compensation package is  
11 that the profit of Defendant CONMED, INC. declines for every  
12 pill, procedure and expense provided for medical care of  
13 inmates, except for express and specific medical conditions  
14 not here relevant, such as HIV infection.

15 2.5 The contract with Defendant Kitsap County expressly states  
16 that dental services will be provided, both at initial  
17 screening of inmates at in-take, and for treatments (not  
18 limited to extractions) and that dental care would be  
19 coordinated with the dentist currently (as of August, 2007)  
20 providing services at the Kitsap County Sheriff's Office Jail.  
21 The contract has been renewed and was in force through 2012.  
22 Under the contract, if an inmate needed specialty care, which  
23 expressly included dental treatment, Defendant CONMED, INC.  
24 was required to provide such care.

25 2.6 Defendant CONMED, INC. is a for-profit corporation.

26 2.7 Defendant CONMED, INC has a policy, express or de facto, of  
27 delaying and denying medical and dental care to increase its  
28 profits, and directs, encourages, or pressures its medical  
care providers to follow this policy.

2.8 Defendant CONMED, INC., hired and supervised numerous employees, including defendants BARBARA MULL, RN; ARLEN JOHNSON, ARNP; SUE STEVENS, RN; and BRUCE KALER, MD to act as agents on its behalf in fulfilling its contract with Defendant KITSAP COUNTY. Defendant CONMED, INC., at all relevant times, had no staff dentist.

2.9 Defendants KITSAP COUNTY, and CONMED, INC., have a policy or custom of requiring incarcerated inmates to secure their own release to seek medical and dental services, instead of facilitating and arranging the care required under the law, to avoid medical and dental expense to the jail facility or to Defendant CONMED, INC.

2.10 Plaintiff TIMOTHY ROBERTSON was incarcerated in the Kitsap County Jail from May 2, 2012 until September 19, 2012, following his arrest on suspicion of possession of drugs. He was held in the Kitsap County Jail as a pretrial detainee until September 6, 2012, when his local charges were dismissed. While he was being detained, on May 22, 2012, he was also arraigned on a fugitive from justice charge, so was thereafter also a pretrial detainee on Texas warrants, pending a Governor's Warrant from Texas.

2.11 On or about June 22, 2012, while still an incarcerated inmate, Plaintiff TIMOTHY ROBERTSON broke a tooth on a stone in food provided to him by Defendant KITSAP COUNTY. The fracture was painful, and left sharp edges which cut his tongue, and an exposed nerve, which was very painful to Plaintiff TIMOTHY ROBERTSON. It was painful if he had hot or cold liquids, and when he chewed. The tooth had a prior filling, which was left loose and unstable.

2.12 There are two documents which inmates must fill out to get official attention to their needs while in the Kitsap County Jail facility: A Health Care Services Request supplied by Defendant CONMED, INC., to request medical attention, and form for Grievances supplied by Defendant KITSAP COUNTY.

2.13 On June 22, 2012, Plaintiff TIMOTHY ROBERTSON submitted a CONMED Health Services Request form in which he states:

I broke a tooth and the pain IS severe. I need to see my dentist.

2.14 On June 25, 2012, Plaintiff TIMOTHY ROBERTSON submitted a second request for assistance in addressing his pain with his broken tooth by filling out another CONMED Health Services Request, in which he said:

I broke a tooth with severe pain. May I be examined or see my dentist? Thanks.

This was answered by Defendant BARBARA MULL, RN on June 26, 2012, who signed and wrote, pursuant to the policy and custom of Defendants CONMED, INC., and KITSAP COUNTY:

You can apply for a furlough through the courts to see your dentist.

This was also approved by Defendant ARLEN JOHNSON, ARNP by his initials on June 27, 2013.

2.15 Plaintiff TIMOTHY ROBERTSON was unable to get his attorney to act on matters outside of his appointment, and his attorney felt it would be futile to try, as there was an out of state hold on his release, so no furlough could be arranged by Plaintiff TIMOTHY ROBERTSON.

2.16 On June 27, 2012, Defendant ARLEN JOHNSON, ARNP, did an oral examination of Plaintiff TIMOTHY ROBERTSON and noted he was missing two teeth, and had dental pain or discomfort. He also

1 noted in his interdisciplinary chart notes:

2 Dental: filling in place but looks loose. No  
3 inflammation or swelling.

4 He assessed dental pain. His plan for care was NSAIDs and  
5 salt water rinses. That same day he wrote a physician's order  
6 for salt water rinses and Ibuprofen.

7 2.17 For an unknown reason, the June 22, 2012 Health Services  
8 Request submitted by Plaintiff TIMOTHY ROBERTSON for was not  
9 stamped as received until July 23, 2012. Also on July 23,  
10 Defendant DR. BRUCE KALER, MD wrote "Plan: Ibuprofen for pain  
11 as needed."

12 2.18 Plaintiff TIMOTHY ROBERTSON continued to have such problems  
13 with his sharp fractured tooth that, on a date uncertain, he  
14 had to perform dentistry on himself by using a spoon to smooth  
15 down the sharp edge of the filling.

16 2.19 On July 24, 2012, Plaintiff TIMOTHY ROBERTSON completed  
17 another CONMED, INC. Health Services Request form. He wrote:

18 My tooth is getting worse. Ibuprofen isn't  
19 helping. The filling is loose. Very painful. I  
20 need a root canal (sic). I have an abscess (sic)....

21 This request was answered again by Defendant BARBARA MULL, RN,  
22 as follows:

23 You can see your dentist and apply for a furlough.  
24 We can see you in clinic.

25 This response was endorsed as well by Defendant ARLEN JOHNSON  
26 on July 27, 2012.

27 2.20 At one of the meetings with Defendant ARLEN JOHNSON, JOHNSON  
28 told Plaintiff TIMOTHY ROBERTSON as to why the care provided  
was not more substantial: "We aren't dentists."

///  
28



2.21 The broken tooth caused such distress to Plaintiff TIMOTHY ROBERTSON that other inmates housed in his unit, lay people, could tell that he needed significant intervention and dental care. On July 29, 2102 they each wrote sworn statements under penalty of perjury for him to assist him in his quest for care. Those included (spelling as in originals):

Jason Sanguinet:

1. I first met Timothy Robertson "Tex" on July 15, to which we met in pill line... I observed Tex grabbing a medical kite which perked my intrest. I asked him what his problem was and he showed me his tooth which appeared to be broken and very swollen... I told him I would pray for him.
2. As the days have gone by and after many kites I have witness "Tex" write and despite how many times I heard him tell staff that he was in pain... He has never received any medical attention.
3. Me and "Tex" pray together every morgning... We still pray for Healing for Tex... We also pray that this Barbaric Medical System gets fixed soon...

Michael Theurich:

1. On or about 29 June, 2012, I witnessed Timothy Robertson break a tooth on a rock served in a rice and beans meal from the jail's nutritions service department. Mr. Robertson pulled the rock out of his mouth and what looked like pieces of his tooth. Robertson reacted in severe pain and ejected contents from his mouth on to the table and floor.
2. I sit and sleep 2 tables over from Robertson. I've observed his pain and irritation from this event. This pain and injury has not properly cared for or been satisfactorily restored to a condition commensurate to be above event. Robertson has filled out several medical requests. Robertson was anticipating an evaluation by a qualified dentist in a reasonable expediant timely manner. This evaluation has not taken place.
3. Robertson has seen the jail medical staff twice, however no dentist. The medical staff provides "lipservice" that they are not dentists, nor have they sent him to a proper-qualified dental provider.

Paul Feliciano:

1. On or about June 29<sup>th</sup> I saw Timothy Robertson break a tooth on a rock served in the rice and beans or some kind of bean served. He pulled the rock out of his mouth and what appeared to be pieces of his tooth and acted in what was obvious severe pain and he discarded the objects across the floor....

- 1 2. I sit at the same table with Timothy so I have  
2 observed his pain through each meal since the said  
3 event. I've seen him complain and fill out medical  
4 kites, and he was expecting a trip to the dentist  
5 that never came....  
6 3. Timothy has seen the medical staff two times that I  
7 recall with the last resulting in a statement made  
8 by the doctor of we are not dentist according to  
9 Timothy. He was very angry and disappointed that  
10 day.

11 Bryan Phillips:

12 About or on June 29<sup>th</sup> of 2012 I Bryan Phillips  
13 witnessed Timothy Robertson bite into what appeared  
14 to be a rock or similar foreign object.

15 He grabbed the side of his face in obvious pain.  
16 The object was served in the meal. It broke his  
17 tooth.

18 Tim has been in a lot of discomfort since the  
19 incident and has seen medical @ KCJ twice. They  
20 refused to fix his tooth and still suffers each  
21 meal.

22 Kyle Pritchard:

23 I Kyle Pritchard personally witnessed Timothy  
24 Robertson break his tooth one night during dinner.  
25 The way I know this is he showed me the piece of  
26 tooth and showed me the exposed filling in his  
27 mouth. I personally have had such dental problem  
28 before, so I can imagine the pain he suffers from,  
from something as simple as air being breathed in  
on his exposed nerve under whats left of his  
filling. I had been here for about three week  
before the incident and known Robertson to be a  
truthful man so when he says he is in pain I fully  
believe him. he tried to save the peice of tooth  
in a folded up peice of paper but somebody threw it  
away.

29 Nory Zeliting:

30 Some time at the end of last June, I was sitting at  
31 a table near Timothy Robertson when I heard him  
32 say, in obviospain, that he boke his tooth; I saw  
33 the broking tooth in his hand and a rock like  
34 object that had apparently came from the food he  
35 was eatting.

36 As a bystander, I witnesses Tim write to the  
37 medical staff a few times with no selusion back for  
38 his obvios pain; One day Tim and I went together to  
medical, Tim was called in first and he came out  
and told me he had asked the Doc to check his  
tooth, and that the Doc had said that he is not a  
Dentist, I could tell that Tim was angered by this.



1 2.22 On August 1, 2012, Plaintiff TIMOTHY ROBERTSON submitted yet  
2 another CONMED, INC. Health Services Request form, in which he  
3 stated:

4 This is the fourth time and countless complaints to  
5 nurses. I informed you of the severe pain because  
6 I broke a tooth on a rock in the food here. Why  
7 won't you truly address it?

8 The written response by Defendant ARLEN JOHNSON, ARNP on  
9 August 3, 2012 was "seen."

10 2.23 On August 1, 2012, Plaintiff TIMOTHY ROBERTSON submitted his  
11 first Inmate Grievance Form on this issue to the KITSAP COUNTY  
12 Jail staff on this issue. The form asks: Have you tried to  
13 solve this problem by speaking with a corrections officer? He  
14 replied "Yes." The form asks "how did you try to solve it?"  
15 He answered:

16 5 medical visits, 2 visits to medical over 1 month  
17 of severe pain and tooth degeneration. I have also  
18 spoke to my attorney.

19 The form asks that he describe the problem. He wrote:

20 I broke this tooth on a rock in the food. Hot  
21 liquid hurts it, cold liquid hurts it. Chewing  
22 hurts. It has cut my tongue until I rubbed it down  
23 with my spoon. I haven't stopped having a headache  
24 since then. The Due Process clause of the  
25 Fourteenth Amendment for State and local inmates.  
26 Estelle v. Gamble 429 U.S. 97 S.Ct 285 Jail and  
27 Prison officials may not deny you medical care as a  
28 means of saving money or for punishment. The  
longer you put me off the more chance this tooth  
will have to be extracted. The last trip to  
medical ended with the doctor telling me "WE AREN'T  
DENTISTS" Jail and prison officials violate our  
constitutional rights when they act with deliberate  
indifference to serious medical needs Harrison vs.  
Barkley 219 F3d 132 136-38 (2d Cir 2000) unwanted  
tooth extraction is unconstitutional. Even though  
you never offered that, in fact I haven't been  
evaluated by a dentist. Moore vs. Jackson, 123 F3d  
1082, 1087 n.3 (8<sup>th</sup> circuit 1997)(holding that a  
delay in treatment of inmates tooth required its  
extraction whereas immediate treatment could have  
saved it. Deliberate indifference exist if the  
official continues with a course of treatment (or

no treatment) that is "cursory" in the face of resultant pain and risk of permanent injury. So cursory treatment amounts to "no treatment at all". Edwards v. Snyder 478 F.3d 827, 831 (7<sup>th</sup> circuit 2007) Chance v. Armstrong 143 F3d 698, 704 (doctors acted with deliberate indifference if they recommend extraction of teeth and reject less evasive course of treatment because of "monetary" "incentives." I attempted to see medical the first evening this happened and was told to put in a kite I am entitled to proper care and now compensatory damages for mental or emotional anguish. Causation and injury. The rock or object was in "this food" and I am in your care. 42 USC § 1997e(e) Lewis v Casey 518 U.S. 343 350 116 S.Ct 2174 1996. I have five sworn declarations from witnesses and have contacted an attorney. If you want to fix my tooth properly and offer some compensation we need not advance this. I grieved another issue that was 2 weeks late in response and never even addressed.

2.24 On August 3, 2012, Corrections Officer Chavez, investigating the formal grievance filed by Plaintiff TIMOTHY ROBERTSON, interviewed Defendant ARLEN JOHNSON, ARNP, who is quoted as follows:

Robertson has a chip of #15 tooth with the filling in place. The nerve is not exposed, It is not emergent that Robertson go to a dentist.

2.25 On August 5, 2012, Plaintiff TIMOTHY ROBERTSON submitted yet another CONMED, INC., Health Services Request Form, in which he stated:

My broken tooth is still very painful, must be an exposed nerve, well over a month, my last visit I was told by Johnson I can't help you. Why?

2.26 On August 7, 2012, Plaintiff TIMOTHY ROBERTSON submitted yet another CONMED, INC., Health Services Request Form, in which he stated:

The pain in my broken tooth is severe causing my head aches and eye aches. I need it fixed. This has gone on for well over a month.

///

1 2.27 On August 9, 2012, the two preceding Heath Service Requests  
2 resulted in a clinic visit with both Defendant SUE STEVENS, RN  
3 and Defendant ARLEN JOHNSON, ARNP, and an examination by  
4 Defendant ARLEN JOHNSON, ARNP, in which he noted on the August  
5 5, 2012 Health Services Request form (as best his handwriting  
6 can be read):

7 Exam: #15 has intact, filling [with] broke area  
8 ant[erior]. #16 ? Missing enamel posterior aspect.  
9 However can not fully visualize, gingiva normal no  
10 lesions seen. Plan: No action.

11 2.28 On August 15 2012, CONMED, INC. Health Services Administrator,  
12 Defendant SUE STEVENS, RN, responded to the August 1, 2012  
13 grievance as follows:

14 Our medical providers have not worked with  
15 deliberate indifference. You have been seen many  
16 times as you stated. You are on the dental list to  
17 be sent to the dentist. Your Ibuprofen order  
18 expired, I have spoke with the provider and it has  
19 been restarted. Having a root canal is not an  
20 option. The dentist will extract it if that's the  
21 treatment needed.

22 2.29 The statement of CONMED, Inc. employee, Defendant SUE STEVENS,  
23 RN that Plaintiff TIMOTHY ROBERTSON was on a dental list was  
24 not true at that time.

25 2.30 On August 16, 2012, Attorney Anthony Otto wrote to Chief of  
26 Corrections Ned Newlin as follows:

27 I write to get assistance for an inmate, Timothy  
28 Robertson, who has significant dental needs which  
29 are not being met.

30 Mr. Robertson broke his tooth about a month and a  
31 half ago. He says it broke while he was in  
32 custody, on a rock in the beans served at the jail.  
33 I think this occurred June 29, 2012, but the exact  
34 date is not available to me. The manner of his  
35 initial injury is not of concern to me at this  
36 time.

37 What does concern me is that the jail medical staff  
38 is denying any dental care for him. By his report,  
39 the tooth is broken in half, and he has sharp

edges, and a loose filling. A nerve is exposed, such that food and temperature changes cause significant pain, and he has had a constant headache. He has been given salt and ibuprofen for the pain, though he cannot take ibuprofen. He has seen the medical staff, who only can say that they are not dentists. About a week ago, he was promised that he may actually get to see a dentist, but it has not happened yet.

The law is very clear that deliberate indifference to dental pain of an inmate, who cannot provide for his own needs, can be the basis of liability of a correctional facility, and is a deprivation of constitutional rights by subjecting the inmate to cruel and unusual punishment. Please get him the care he needs on an expedited basis. If there is any delay in getting him to a dentist, then please at least get him immediate, appropriate pain relief, and some dental wax to cover the nerve and sharp edges.

2.31 On August 23, 2012, Kitsap County Jail Lieutenant Roxanne Payne remarked on the August 1, 2012 grievance filed by Plaintiff TIMOTHY ROBERTSON, as follows:

A consultation will be set up for us to review. Sgt Dick will be following up with you on this incident due to no documentation that this had been reported to officers.

2.32 On August 23, 2012, Plaintiff TIMOTHY ROBERTSON submitted another CONMED, INC. Health Services Request in which he said:

My tylenol ran out, could you please renew it? I've taken it for 90 days for aches and pains, you put me on Ibuprofen for the broke tooth, I cannot take it because of stomach.

On August 24, 2012, Defendant ARLEN JOHNSON responded:

Plan: We will need to check blood test before any more of these medications.

2.33 Only on August 21, 2012 did CONMED, INC. employee, Defendant DR. BRUCE KALER, MD, with the signed approval of Defendant SUE STEVENS, RN submit a request up the chain of command at CONMED, INC. for authorization for a dentist to attend to the needs of Plaintiff TIMOTHY ROBERTSON. The request was listed

as emergent, noted that the condition interfered with activities of daily living, and the nature of the disability was pain. It acknowledged that Plaintiff TIMOTHY ROBERTSON was a pre-trial detainee. It described the diagnosis for which treatment is necessary as "Filling in #15 with loss of some face anteriorly #16 ? Missing piece on posterior." Records show the request was faxed to corporate headquarters on a date unknown by Defendant BARBARA MULL, RN.

2.34 On August 28, 2012 a referral form was completed by Defendant BARBARA MULL, RN for Plaintiff TIMOTHY ROBERTSON to be seen at South Kitsap Family Dentistry, a local dentist. The referral was for a consultation only on teeth #15, 16.

2.35 On August 28, 2012, Plaintiff TIMOTHY ROBERTSON was seen by Dr. Paul Hutchinson after being transported to the South Kitsap Family Dentistry office. Dr. Hutchinson's encounter notes are as follows:

Subjective: Patient points to upper left second to last tooth, he was eating and the tooth broke and is painful now for hot/cold/pressure and has a headache.

Objective: Inter-oral examination #14 is fractured and has a large amalgam [filling] Distal [back], Occlusal [top], Lingual [tongue-side] and Buccal [cheek side]. Extra oral exam is within normal limits.

Assessment: Irreversible pulpitis, Fracture #14.

Plan: Could have a root canal done, build up and a crown, or an extraction. He referred to a Dr. Huey for the endo [root canal] and Dr. Berens can do the extraction here [at the clinic] if that's what he [Robertson] wants. Dr. Hutchinson prescribed Clindamycin, a powerful antibiotic, and 40 Tylenol.

For the next visit: an extraction if he [Robertson] decides to have that done. Dr. Hutchinson noted that it may be hard to extract.

1 2.36 On August 31, 2012 South Kitsap Family Dentistry by fax  
2 submitted a cost quotation for treatment to the Kitsap County  
3 Jail and CONMED, INC. The plan included root canal therapy,  
4 a crown buildup and a porcelain crown. They referred  
5 treatment to Dr. Huey.

6 2.37 On September 4, 2012, Plaintiff TIMOTHY ROBERTSON submitted  
7 another CONMED, INC. Health services Request form. He stated:

8 My tooth is severely painful still, when are we  
9 going to begin what the dentist recommends?

10 To this request, Defendant SUE STEVENS, RN, the Health  
11 Services Administrator for Defendant CONMED, INC., wrote an  
12 assessment:

13 We are waiting for approval from the jail. We  
14 should have this approval early next week. If I  
15 haven't heard from Lt. Payne by next Wednesday  
[September 12], I will contact her and make contact  
with you.

16 2.38 On September 6, 2012, the Kitsap County criminal charge  
17 against Plaintiff TIMOTHY ROBERTSON was dismissed, leaving no  
18 local holds on Plaintiff TIMOTHY ROBERTSON, but he was still  
19 detained and subject to extradition, waiting for a Governor's  
20 Warrant from Texas, which was in process.

21 2.39 On September 11, 2012, Plaintiff TIMOTHY ROBERTSON was  
22 transported for a root canal with Dr. Huey. Dr. Huey noted  
23 his findings:

24 Caries, fractured tooth, P in perforation. Caries,  
irreversible pulpitis.

25 He listed his orders and recommendations as follows:

26 Root Canal, build up, crown.

27 Dr. Huey then performed the root canal.  
28



1 2.40 Pulpitis, as was diagnosed by Dr. Huey, is a pathological  
2 condition of the tooth wherein the pulp becomes inflamed which  
3 causes pain and pressure. Once the tooth pulp becomes  
4 inflamed, it irritates the nerves and connective tissue in the  
5 tooth, and in severe cases, the pain is felt referred to areas  
6 other than the direct source of the inflammation. Pain  
7 referral can be felt in the face and the mouth.

8 2.41 Irreversible pulpitis is where the pulpitis has caused such  
9 severe damage to the nerve that cannot be reversed, resulting  
10 in the need for root canal therapy.

11 2.42 On September 12, 2012, Plaintiff TIMOTHY ROBERTSON submitted  
12 another CONMED, INC. Health Services Request form. He wrote:

13 I had a root canal, this tooth is broke in half  
14 according to the dentist and there is shooting pain  
15 every time I bite down. The dentist said it needed  
16 to be crowned quickly.

17 To this request, Defendant BARBARA MULL, RN responded:

18 Assessment: Spoke with dentist office. Moderate to  
19 severe discomfort can be expected for up to a week.  
20 They usually recommend vicodin but were unaware it  
21 could be dispensed in the jail. Provider called.  
22 Orders received.

23 Plan: the appointment has already been made. There  
24 is a treatment plan in place.

25 Defendant DR. BRUCE KALER, M.D. also initialed the response.

26 2.43 On September 14, 2012, Plaintiff TIMOTHY ROBERTSON submitted  
27 another CONMED, INC. Health Services Request form. He wrote:

28 When I put my teeth together pain shoots through my  
upper jaw into my eye. I don't understand why the  
pain is worse than before the root canal.

To this request, Defendant BARBARA MULL responded on September  
18, 2012:

///  
///

1 Plan: You are on pain medications 3 times a day.  
2 You have a dental appt. very soon. Make sure to  
3 let the dentist known about all symptoms you are  
4 having.

5 2.44 On September 18, 2012, Plaintiff TIMOTHY ROBERTSON was again  
6 transported to South Kitsap Family Dentistry offices where Dr.  
7 Hutchinson, D.D.S. prepared the tooth for a crown, removing  
8 decay, building up the tooth, seating a temporary crown, and  
9 ordering a permanent crown. There is a note in the record  
10 stating "RUSH case!!!!"

11 2.45 The installation of the temporary crown done by Dr.  
12 Hutchinson, D.D.S. on September 18, 2012 was the first pain  
13 relief experienced by Plaintiff TIMOTHY ROBERTSON since the  
14 day he broke the tooth.

15 2.46 On September 19, 2012, Plaintiff TIMOTHY ROBERTSON was removed  
16 from the Kitsap County Jail and sent to Texas on a Governor's  
17 Warrant on his extradition, before the permanent crown could  
18 be seated.

19 2.47 Defendant TIMOTHY ROBERTSON remained in custody in Texas for  
20 over a year. He remains on probation living in Carrollton,  
21 Texas.

22 2.48 Approximately six months after the temporary crown was  
23 installed, it cracked and no longer protected the tooth, and  
24 the pain returned. All of this pain is due to the delay in  
25 getting timely and appropriate care for Plaintiff TIMOTHY  
26 ROBERTSON.

27 2.49 Deliberate indifference to the serious medical needs of  
28 prisoners constitutes unnecessary and wanton infliction of  
pain proscribed by the Eighth Amendment of the United States  
Constitution to be free from cruel and unusual punishment,

1 made applicable to the States by the Fourteenth Amendment.  
2 Plaintiff TIMOTHY ROBERTSON, as a pretrial detainee on the  
3 Kitsap County charge, and also on the Texas warrants, has been  
4 denied Due Process of Law under the Fifth and Fourteenth  
5 Amendments in imposition of such punishment upon him. These  
6 deprivations were also in derogation and contrary to 42 U.S.C.  
7 §1983.

8 2.50 Plaintiff TIMOTHY ROBERTSON was made to endure almost three  
9 months of unrelenting pain, headaches, and inability to  
10 properly chew his food. The pain was abated while he had a  
11 temporary crown, but that broke and pain returned.

12 2.50 Defendants CONMED, INC.; BARBARA MULL, RN; ARLEN JOHNSON,  
13 ARNP; SUE STEVENS, RN; and BRUCE KALER, MD all refused to  
14 refer Plaintiff TIMOTHY ROBERTSON to a dentist when it was  
15 plain even to lay persons that he needed such specialist care,  
16 until intervention of an attorney. Such refusal was  
17 deliberate indifference to the serious medical and dental  
18 needs of Plaintiff TIMOTHY ROBERTSON. Such refusal was  
19 contrary to the contract they had with Defendant KITSAP  
20 COUNTY, underscoring the deliberate nature of their failure to  
21 bring Plaintiff TIMOTHY ROBERTSON relief from his pain, as  
22 they knew it was their obligation to seek and obtain dental  
23 care for him, especially as they were not dentists.

24 2.51 Defendants KITSAP COUNTY; CONMED, INC.; BARBARA MULL, RN;  
25 ARLEN JOHNSON, ARNP; SUE STEVENS, RN; and BRUCE KALER, MD, by  
26 establishing and implementing the policy requiring inmates,  
27 and particularly Plaintiff TIMOTHY ROBERTSON, to seek their  
28 own furlough from incarceration to attend to their own medical  
needs demonstrated deliberate indifference to the serious

1 medical needs of Plaintiff TIMOTHY ROBERTSON, and delayed  
2 Plaintiff TIMOTHY ROBERTSON from getting needed dental care.  
3 2.52 Plaintiff TIMOTHY ROBERTSON is entitled to damages for medical  
4 and other special expenses, pain and suffering, general  
5 damages proximately resulting from the acts of the defendants,  
6 and punitive damages, including costs of suit and reasonable  
7 attorney fees under 42 U.S.C. §1988.

8 III. PRAYER FOR RELIEF

9 For the reasons stated above, Plaintiff TIMOTHY ROBERTSON  
10 prays for the following relief:

11 3.1 For judgment against each of the defendants, jointly and  
12 severally, for monetary special damages in an amount to be  
13 determined at trial.


14 3.2 For judgment against each of the defendants, jointly and  
15 severally, for general compensatory damages in an amount to be  
16 determined at trial;

17 3.3 For judgment for punitive damages against each of the  
18 defendants, jointly and severally, in an amount to be  
19 determined at trial;

20 3.4 For attorney fees and costs authorized by statute, including  
21 reasonable attorney's fees pursuant to 42 U.S.C. §1988;

22 3.5 For such other relief as the court deems just.

23 Dated this 22<sup>nd</sup> day of June, 2015.

24   
25 ANTHONY C. OTTO, WSBA 11146  
26 Attorney for Plaintiff  
27 P.O. Box 1368  
28 Port Orchard, WA 98366  
tony@anthonyotto.com  
(360) 876-5566 - Telephone  
(360) 895-8589 - Facsimile